

STATE OF MONTANA

DEPARTMENT OF INSURANCE

INSTRUCTIONS FOR VIATICAL SETTLEMENT BROKER APPLICATION

Life insurance producers who are licensed in Montana and have been licensed as an insurance producer with life authority in Montana or another state for at least one year are permitted to operate as a Viatical Settlement Broker. The Commissioner of Insurance must be notified by the life insurance producer within 30 days from the first day of operating as a Viatical Settlement Broker on the attached Notification Form. For all non licensed life insurance producers, the following items are required to be completed for a Viatical Settlement Broker's License.

- Viatical Settlement Broker Application Form
- Viatical Settlement Broker Attestation Regarding a Licensed Viatical Settlement Provider
- Biographical Affidavit
- Appointment of Attorney to Accept Service of Process.
- Annual Reporting Forms

Complete the above forms and submit along with the \$50.00 license fee.

Please note: A viatical settlement broker shall file with the commissioner information brochures, advertising, and other solicitation materials that will be used to market viatical settlements to viators or prospective viators in this state before using such materials. These materials are to be filed with the Rates and Forms Division of the Department of Insurance. Please contact the Rates and Forms Division for further information with regards to these required filings.

STATE OF MONTANA
JOHN MORRISON
State Auditor and Commissioner of Insurance
840 Helena Ave.
Helena, Montana 59601
<http://sao.mt.gov/>

**NOTIFICATION OF LICENSED LIFE INSURANCE PRODUCER TO ACT AS VIATICAL
SETTLEMENT BROKER**

I, _____,
(Name of Montana Licensed Insurance Producer)

have been licensed a life insurance producer since _____ and my
(Date the producer was licensed)

Montana producer license number is _____.
(Montana producer license number)

I have been licensed as a life producer in _____,
(Home State of Agent)

since _____.
(Date life producer was licensed in home state) (Home state producer license number)

I wish to inform the State Auditor and Commissioner of Insurance of my intention to act as a Viatical
Settlement Broker. I began acting as a Viatical Settlement Broker on _____.
(Date)

I further state that I will conduct myself a Viatical Settlement Broker in accordance with Section 33,
Chapter 20, Part 13, MCA. I have also enclosed my one-time application fee of \$50 with this
Notification. I have enclosed a copy of the disclosure form that I have prepared which states to the
viator that I represent the viator and owe the viator a fiduciary duty and to act according to the viator's
instructions and in the best interest of the viator. Please remember that all Viatical Settlement
Brokers are required to provide to the Insurance Commissioners Office, by March 1 forms VSB 001,
VSB 002 and VSPB 001, which are located at <http://sao.mt.gov/>.

(Signature of Insurance Producer)

(Date Notification was signed)

STATE OF MONTANA
JOHN MORRISON
State Auditor and Commissioner of Insurance
840 Helena Ave.
Helena, Montana 59601
<http://sao.mt.gov/>

VIATICAL SETTLEMENT BROKER APPLICATION

NAME OF APPLICANT _____

DBA (if applicable) _____

HOME OFFICE ADDRESS _____
(Street or P.O. Box)

(City) (State) (Zip)

MAILING ADDRESS _____
(Street or P.O. Box)

(City) (State) (Zip)

Contact Person _____

Phone Number () _____

TYPE OF BUSINESS ORGANIZATION (check one)

☐ Individual ☐ Partnership ☐ Association ☐ Corporation

Date Incorporated _____ State of Domicile _____ FEIN Number _____

List names and addresses of all members, officers, or owners of the applicant.

Full Name	Title	Address	%Ownership
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Have you or any business in which you are or were an owner, partner, officer or director ever been involved in an administrative proceeding regarding any professional or occupational license? YES _____ NO _____

If yes, please explain with a written statement and copies of official documents.

Have you ever been convicted of, or are you currently charged with, committing a crime, whether or not adjudication was withheld?

"Crime" includes a misdemeanor, felony, or military offense. You may exclude misdemeanor traffic citations and juvenile offenses. "Convicted" includes, but is not limited to, having been found guilty by verdict or a judge or jury, having entered a plea of guilty or nolo contendere, or having been given probation, a suspended sentence or a fine.

If yes, please explain with a written statement and copies of official documents.

Are you currently a party to, or have you ever been found liable in, any lawsuit or arbitration proceeding involving allegations of fraud, misappropriation or conversion of funds, misrepresentation or breach of fiduciary duty? YES _____ NO _____

Herewith submitted are the following documents:

- () A biographical affidavit for each individual, member, officer or owner of applicant and each person to be authorized to act under the license. (One copy enclosed. Please make additional copies if needed.)
- () A copy of the partnership agreement, or articles of incorporation, or articles of association depending on your type of business organization.
- () A Certificate of Authority from your domiciliary state, if available.
- () If applicable, authority from the appropriate regulatory official from your state of domicile to use a DBA.
- () Financial statements including a balance sheet and income statement for the most recent completed calendar or fiscal year. Audited financial statements are desired if available.
- () A detailed explanation of your business plans for Montana including the marketing of your services.
- () A copy of an executed indemnity bond in the amount of \$50,000 payable to the State of Montana or a copy of an errors and omissions policy in an amount commensurate with the broker's exposure.
- () A completed Service of Process form (VIATICALBROKER.SP). See enclosure.
- () Registration fee of \$50.00. Checks may be made payable to "Commissioner of Insurance."

DATED _____
(Name & Title of Officer)

State of _____)
County of _____) ss.

_____(name) being duly sworn, deposes that he/she is the
_____(title of official capacity) of the above-named applicant and
that the foregoing is a full, true, and correct statement of all the facts concerning this application. I
understand that pursuant to Section 33-17-1001, MCA, any false statement contained in any
document concerning this application may subject all licenses issued to me and this organization to
suspension, or revocation, or other administrative action.

Signature

Subscribed and sworn to before me this _____ day of _____, 20____.

(SEAL) NOTARY PUBLIC for the state of _____
Residing at _____
My commission expires _____

ATTESTATION INSTRUCTIONS

ATTESTATIONS SUBMITTED MUST BE ORIGINALS. COPIES ARE NOT ACCEPTABLE.

This report must be attested to by the following, based upon organizational structure of the viatical settlement broker:

1. If the viatical settlement broker is a corporation, the report must be attested by at least two principal officers of the viatical settlement broker;
2. If the viatical settlement broker is a partnership, the report must be attested by two partners; or
3. If the viatical settlement broker is not a corporation or a partnership, by the broker's owner and manager.
4. A new Attestation form must be provided when for any change in ownership, based upon the organizational structure of the viatical settlement broker.

Viatical Settlement Broker Attestation

Name of Viatical Settlement Broker:

Type of Business Organization:

MAILING ADDRESS

Street or PO Box: _____

City of: _____ State: _____ Zip: _____

Phone #: _____ Fax #: _____ Web Site: _____

As an individual responsible for conducting the affairs of the above named Viatical settlement broker applying to transact business in the State of Montana, I am familiar with the laws of Montana relating to Viatical settlement brokers and do hereby state that pursuant to Section 33-20-1303, MCA, that the Viatical settlement broker will only utilize the services of a licensed Montana Viatical settlement provider.

(Typed Name)

(Typed Name)

(Signature)

(Date)

(Signature)

(Date)

(Title)

(Title)

Sworn to and subscribed before me

Sworn to and subscribed before me

This day of _____, 20____

This day of _____, 20____

NOTARY PUBLIC for the state of _____

NOTARY PUBLIC for the state of _____

Residing at _____

Residing at _____

My commission expires _____

My commission expires _____

(SEAL)

(SEAL)

BIOGRAPHICAL AFFIDAVIT

To the extent permitted by law, this affidavit will be kept confidential by the state insurance regulatory authority.

(Print or Type)

Full Name, Address and telephone number of the present or proposed entity under which this biographical statement is being required (Do Not Use Group Names). _____

In connection with the above-named entity, I herewith make representations and supply information about myself as hereinafter set forth. (Attach addendum or separate sheet if space hereon is insufficient to answer any question fully.) IF ANSWER IS "NO" OR "NONE," SO STATE.

1. a. Affiant's Full Name (Initials Not Acceptable). _____

b. Maiden Name (if applicable). _____

2. a. Have you ever had your name changed? If yes,
give the reason for the change and provide the full name(s).

b. Other names used at any time (including aliases).

3. a. Are you a citizen of the United States?

b. Are you a citizen of any other country, if so, what country?

4. Affiant's Occupation or Profession. _____

5. Affiant's business address. _____

Business telephone. _____

6. Education and Training:

<u>College/ University</u>	<u>City/ State</u>	<u>Dates Attended (MM/YY)</u>	<u>Degree Obtained</u>
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<u>Graduate Studies:</u>	<u>College/ University</u>	<u>City/ State</u>	<u>Dates Attended (MM/YY)</u>	<u>Degree Obtained</u>
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<u>Other Training: Name</u>	<u>City/ State</u>	<u>Dates Attended (MM/YY)</u>	<u>Degree/Certification Obtained</u>
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(Note: If affiant attended a foreign school, please provide full address and telephone number of the college/university. If applicable provide the foreign student Identification Number in the space provided in the Biographical Affidavit Supplemental Information)

7. List of memberships in professional societies and associations.

<u>Name of Society/Association</u>	<u>Contact Name</u>	<u>Address of Society/Association</u>	<u>Telephone Number of Society/Association</u>
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8. Present or proposed position with the applicant entity. _____

9. List complete employment record for the past twenty (20) years, whether compensated or otherwise (up to and including present jobs, positions, partnerships, owner of an entity, administrator, manager, operator, directorates or officerships). Please list the most recent first. Attach additional pages if the space provided is insufficient. It is only necessary to provide telephone numbers and supervisory information for the past ten (10) years.

Beginning/Ending
Dates _____(MM/YY) - _____

Employers'Name _____

Address _____ City _____ State/Province _____

Country _____ Postal Code _____ Phone _____ Offices/Positions Held _____

Supervisor / Contact _____

Beginning/Ending
Dates _____(MM/YY) - _____

Employers' Name _____

Address _____ City _____ State/Province _____

Country _____ Postal Code _____ Phone _____ Offices/Positions Held _____

Supervisor / Contact _____

Beginning/Ending
Dates _____ (MM/YY) - _____

Employers'Name _____

Address _____ City _____ State/Province _____

Country _____ Postal Code _____ Phone _____ Offices/Positions Held _____

Supervisor / Contact _____

Beginning/Ending
Dates _____ (MM/YY) - _____

Employers'Name _____

Address _____ City _____ State/Province _____

Country _____ Postal Code _____ Phone _____ Offices/Positions Held _____

Supervisor / Contact _____

10. a. Have you ever been in a position which required a fidelity bond? _____ If any claims were made on the bond, give details. _____

b. Have you ever been denied an individual or position schedule fidelity bond, or had a bond canceled or revoked? If yes, give details. _____

11. List any professional, occupational and vocational licenses (including licenses to sell securities) issued by any public or governmental licensing agency or regulatory authority or licensing authority that you presently hold or have held in the past. For any non-insurance regulatory issuer, identify and provide the name, address and telephone number of the licensing authority or regulatory body having jurisdiction over the license (s) issued. Attach additional pages if the space provided is insufficient. _____

Organization/Issuer of License _____ Address _____

City _____ State/Province _____ Country _____ Postal Code _____

License Type _____ License # _____ Date Issued (MM/YY) _____

Date Expired (MM/YY) _____ Reason for Termination _____

Non-insurance Regulatory Phone Number (if known _____

Organization /Issuer of License _____ Address _____

City _____ State/Province _____ Country _____ Postal Code _____

License Type _____ License # _____ Date Issued (MM/YY) _____

Date Expired (MM/YY) _____ Reason for Termination _____

Non-insurance Regulatory Phone Number (if known) _____

12. In responding to the following, if the record has been sealed or expunged, and the affiant has personally verified that the record was sealed or expunged, an affiant may respond "no" to the question. Have you ever:

a. Been refused an occupational, professional, or vocational license or permit by any regulatory authority, or any public administrative, or governmental licensing agency?

b. Had any occupational, professional, or vocational license or permit you hold or have held, been subject to any judicial, administrative, regulatory, or disciplinary action?

c. Been placed on probation or had a fine levied against you or your occupational, professional, or vocational license or permit in any judicial, administrative, regulatory, or disciplinary action?

d. Been charged with, or indicted for, any criminal offense(s) other than civil traffic offenses? _

e. Pled guilty, or nolo contendere, or been convicted of, any criminal offense(s) other than civil traffic offenses?

f. Had adjudication of guilt withheld, had a sentence imposed or suspended, had pronouncement of a sentence suspended, or been pardoned, fined, or placed on probation, for any criminal offense(s) other than civil traffic offenses? _____

g. Been subject to a cease and desist letter or order, or enjoined, either temporarily or permanently, in any judicial, administrative, regulatory, or disciplinary action, from violating any federal, state law or law of another country regulating the business of insurance, securities or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities or banking? _____

h. Been, within the last ten (10) years, a party to any civil action involving dishonesty, breach of trust, or a financial dispute? _____

i. Had a finding made by the Comptroller of any state or the Federal Government that you have violated any provisions of small loan laws, banking or trust company laws, or credit union laws, or that you have violated any rule or regulation lawfully made by the Comptroller of any state or the Federal Government? _____

- j. Had a lien, or foreclosure action filed against you or any entity while you were associated with that entity?

If the response to any question above is answered "Yes", please provide details including dates, locations, disposition, etc. Attach a copy of the complaint and filed adjudication or settlement as appropriate.

13. List any entity subject to regulation by an insurance regulatory authority that you control directly or indirectly. The term "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or non-management services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, ten percent (10%) or more of the voting securities of any other person. _____
- _____
- _____

If any of the stock is pledged or hypothecated in any way, give details. _____

14. Do [Will] you or members of your immediate family individually or cumulatively subscribe to or own, beneficially or of record, 10% or more of the outstanding shares of stock of any entity subject to regulation by an insurance regulatory authority, or its affiliates? An "affiliate" of, or person "affiliated" with, a specific person, is a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified. If the answer is "Yes", please identify the company or companies in which the cumulative stock holdings represent 10% or more of the outstanding voting securities.
- _____
- _____

If any of the shares of stock are pledged or hypothecated in any way, give details.

15. Have you ever been adjudged a bankrupt? _____

16. To your knowledge has any company or entity for which you were an officer or director, trustee, investment committee member, key management employee or controlling stockholder, had any of the following events occur while you served in such capacity? If yes, please indicate and give details. When responding to questions (b) and (c) affiant should also include any events within twelve (12) months after his or her departure from the entity.

- a. Been refused a permit, license, or certificate of authority by any regulatory authority, or Governmental-licensing agency? _____

- b. Had its permit, license, or certificate of authority suspended, revoked, canceled, non-renewed, or subjected to any judicial, administrative, regulatory, or disciplinary action (including rehabilitation, liquidation, receivership, conservatorship, federal bankruptcy proceeding, state insolvency, supervision or any other similar proceeding)? _____
- c. Been placed on probation or had a fine levied against it or against its permit, license, or certificate of authority in any civil, criminal, administrative, regulatory, or disciplinary action? _____

Note: If an affiant has any doubt about the accuracy of an answer, the question should be answered in the positive and an explanation provided.

Dated and signed this ____ day of ____ at ____ I hereby certify under penalty of perjury that I am acting on my own behalf, and that the foregoing statements are true and correct to the best of my knowledge and belief.

(Signature of Affiant)

Date

State of _____ County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ By _____, and:

† who is personally known to me, or

† who produced the following identification: _____

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

BIOGRAPHICAL AFFIDAVIT
Supplemental Information

(Print or Type)

To the extent permitted by law, this affidavit will be kept confidential by the state insurance regulatory authority.

Full Name, Address, and telephone number of the present or proposed entity under which this biographical statement is being required (Do Not Use Group Names).

1. a. Affiant's Full Name (Initials Not Acceptable). _____
 b. Maiden Name (if applicable) _____
2. Affiant's Social Security Number _____
3. Government Identification Number if not a U.S. Citizen _____
4. Foreign Student ID# (if applicable) _____
5. Date of Birth: (MM/DD/YY) _____ Place of Birth: City _____
 State/Province _____ Country _____
6. Name of Affiant's Spouse (if applicable) _____
7. List your residences for the last ten (10) years starting with your current address, giving:

Beginning/Ending

Dates (MM/YY)	Address	City	State/ Province	Country	Postal Code
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Dated and signed this _____ day of _____ at _____
I hereby certify under penalty of perjury that I am acting on my own behalf, and that the foregoing statements
are true and correct to the best of my knowledge and belief.

(Signature of Affiant)

Date

State of _____ County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ By
_____, and:

† who is personally known to me, or

† who produced the following identification: _____

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

DISCLOSURE AND AUTHORIZATION CONCERNING BACKGROUND REPORTS*(All states except
California, Minnesota and Oklahoma)*

This Disclosure and Authorization is provided to you in connection with pending or future application(s) of _____**[insert company name]** ("Company") for licensure or a permit to organize ("Application") with a department of insurance in one or more states within the United States. Company desires to procure a consumer or investigative consumer report (or both) ("Background Reports") regarding your background for review by a department of insurance in any state where Company pursues an Application during the term of your functioning as, or seeking to function as, an officer, member of the board of directors or other management representative ("Affiant") of Company or of any business entities affiliated with Company ("Term of Affiliation") for which a Background Report is required by a department of insurance reviewing any Application. Background Reports requested pursuant to your authorization below may contain information bearing on your character, general reputation, personal characteristics, mode of living and credit standing. The purpose of such Background Reports will be to evaluate the Application and your background as it pertains thereto. To the extent required by law, the Background Reports procured under this Disclosure and Authorization will be maintained as confidential.

You may obtain copies of any Background Reports about you from the consumer reporting agency ("CRA") that produces them. You may also request more information about the nature and scope of such reports by submitting a written request to Company. To obtain contact information regarding CRA or to submit a written request for more information, contact _____**[insert company's designated person, position, or department, address and phone]**.

Attached for your information is a "Summary of Your Rights Under the Fair Credit Reporting Act."

AUTHORIZATION: I am currently an Affiant of Company as defined above. I have read and understand the above Disclosure and by my signature below, I consent to the release of Background Reports to a department of insurance in any state where Company files or intends to file an Application, and to the Company, for purposes of investigating and reviewing such Application and my status as an Affiant. I authorize all third parties who are asked to provide information concerning me to cooperate fully by providing the requested information to CRA retained by Company for purposes of the foregoing Background Reports, except records that have been erased or expunged in accordance with law.

I understand that I may revoke this Authorization at any time by delivering a written revocation to Company and that Company will, in that event, forward such revocation promptly to any CRA that either prepared or is preparing Background Reports under this Disclosure and Authorization. This Authorization shall remain in full force and effect until the earlier of (i) the expiration of the Term of Affiliation, (ii) written revocation as described above, or (iii) twelve (12) months following the date of my signature below.

A true copy of this Disclosure and Authorization shall be valid and have the same force and effect as the signed original.

(Printed Full Name and Residence Address)

(Signature)

(Date)

State of _____

County of _____

The foregoing instrument was acknowledged before me this_____day of_____ 20_____ By
_____, who is personally known to me, or _____who produced the
following identification:

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

DISCLOSURE AND AUTHORIZATION CONCERNING BACKGROUND REPORTS (*Minnesota and Oklahoma*)

This Disclosure and Authorization is provided to you in connection with pending or future application(s) of _____ **[insert company name]** ("Company") for licensure or a permit to organize ("Application") with a department of insurance in one or more states within the United States. Company desires to procure a consumer or investigative consumer report (or both) ("Background Reports") regarding your background for review by a department of insurance in any state where Company pursues an Application during the term of your functioning as, or seeking to function as, an officer, member of the board of directors or other management representative ("Affiant") of Company or of any business entities affiliated with Company ("Term of Affiliation") for which a Background Report is required by a department of insurance reviewing any Application. Background Reports requested pursuant to your authorization below may contain information bearing on your character, general reputation, personal characteristics, mode of living and credit standing. The purpose of such Background Reports will be to evaluate the Application and your background as it pertains thereto. To the extent required by law, the Background Reports procured under this Disclosure and Authorization will be maintained as confidential.

You may request more information about the nature and scope of Background Reports produced by any consumer reporting agency ("CRA") by submitting a written request to Company. You should submit any such written request for more information, to _____ **[insert company's designated person, position, or department, address and phone]**.

Attached for your information is a "Summary of Your Rights Under the Fair Credit Reporting Act." You will be provided with a copy of any Background Report procured by Company if you check the box below.

☐ By checking this box, I request a copy of any Background Report from any CRA retained by Company, at no extra charge.

AUTHORIZATION: I am currently an Affiant of Company as defined above. I have read and understand the above Disclosure and by my signature below, I consent to the release of Background Reports to a department of insurance in any state where Company files or intends to file an Application, and to the Company, for purposes of investigating and reviewing such Application and my status as an Affiant. I authorize all third parties who are asked to provide information concerning me to cooperate fully by providing the requested information to CRA retained by Company for purposes of the foregoing Background Reports, except records that have been erased or expunged in accordance with law.

I understand that I may revoke this Authorization at any time by delivering a written revocation to Company and that Company will, in that event, forward such revocation promptly to any CRA that either prepared or is preparing Background Reports under this Disclosure and Authorization. This Authorization shall remain in full force and effect until the earlier of (i) the expiration of the Term of Affiliation, (ii) written revocation as described above, or (iii) twelve (12) months following the date of my signature below.

A true copy of this Disclosure and Authorization shall be valid and have the same force and effect as the signed original.

(Printed Full Name and Residence Address)

(Signature)

(Date)

State of _____ County of _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ By _____, who is personally known to me, or _____who produced the following identification:

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

DISCLOSURE AND AUTHORIZATION CONCERNING BACKGROUND REPORTS (*California*)

This Disclosure and Authorization is provided to you in connection with a pending application of _____**[insert company name]**("Company") for licensure or a permit to organize ("Application") with a department of insurance in one or more states within the United States. Company desires to procure a consumer or investigative consumer report (or both)("Background Reports") regarding your background for review by any department of insurance in such states where Company is currently pursuing an Application, because you are either functioning as, or are seeking to function as, an officer, member of the board of directors or other management representative ("Affiant") of Company or of any business entities affiliated with Company ("Term of Affiliation") for which a Background Report is required by a department of insurance reviewing any Application. Background Reports will be obtained through _____**[insert name of CRA, address]**("CRA"). Background Reports requested pursuant to your authorization below may contain information bearing on your character, general reputation, personal characteristics, mode of living and credit standing. The purpose of such Background Reports will be to evaluate the Application and your background as it pertains thereto. To the extent required by law, the Background Reports procured under this Disclosure and Authorization will be maintained as confidential.

You may request more information about the nature and scope of Background Reports produced by any consumer reporting agency ("CRA") by submitting a written request to Company. You should submit any such written request for more information, to _____**[insert company's designated person, position, or department, address and phone]**.

Attached for your information is a "Summary of Your Rights Under the Fair Credit Reporting Act." You will be provided with a copy of any Background Report procured by Company if you check the box below.

By checking this box, I request a copy of any Background Report from any CRA retained by Company, at no extra charge.

Under section 1786.22 of the California Civil Code, you may view the file maintained on you by the CRA listed above. You may also obtain a copy of this file, upon submitting proper identification and paying the costs of duplication services, by appearing at the CRA in person or by mail; you may also receive a summary of the file by telephone. The CRA is required to have personnel available to explain your file to you and the CRA must explain to you any coded information appearing in your file. If you appear in person, you may be accompanied by one other person of your choosing, provided that person furnishes proper identification.

AUTHORIZATION: I am currently an Affiant of Company as defined above. I have read and understand the above Disclosure and by my signature below, I consent to the release of Background Reports to a department of insurance in any state where Company files or intends to file an Application, and to the Company, for purposes of investigating and reviewing such Application and my status as an Affiant. I authorize all third parties who are asked to provide information concerning me to cooperate fully by providing the requested information to CRA retained by Company for purposes of the foregoing Background Reports, except records that have been erased or expunged in accordance with law.

I understand that I may revoke this Authorization at any time by delivering a written revocation to Company and that Company will, in that event, forward such revocation promptly to any CRA that either prepared or is preparing Background Reports under this Disclosure and Authorization. In no event, however, will this authorization remain in effect beyond twelve (12) months following the date of my signature below.

A true copy of this Disclosure and Authorization shall be valid and have the same force and effect as the signed original.

(Printed Full Name and Residence Address)

(Signature)

(Date)

State of _____ County of _____

The foregoing instrument was acknowledged before me this _____ day of_____, 20_____ By _____, who is personally known to me, or _____who produced the following identification:

[SEAL]

Notary Public

Printed Notary Name

My Commission Expires

**APPOINTMENT OF ATTORNEY TO ACCEPT
SERVICE OF PROCESS**

_____ (hereinafter "Viatical Settlement Broker"), duly organized under the laws of the State of _____, appoints THE DULY ELECTED STATE AUDITOR AND COMMISSIONER OF INSURANCE OF THE STATE OF MONTANA as its attorney to receive service of legal process issued against it in the State of Montana. The Viatical Settlement Broker authorizes the Commissioner, or, in the Commissioner's absence, an employee of the Commissioner, to acknowledge service of legal process on behalf of the Viatical Settlement Broker. The Viatical Settlement Broker does consent and agree that any lawful process against it that is served upon the Commissioner as appointed attorney shall have the same legal force and validity as if served upon the Viatical Settlement Broker and waives all claim or right of error by reason of such acknowledgement of service.

This authority may be withdrawn only upon a written notice of revocation and in any case shall continue in effect so long as any liability arising out of this appointment remains outstanding in the State of Montana and binds the assets or liabilities of the Viatical Settlement Broker or any success in interest. This instrument is executed pursuant to, and shall be construed to constitute full compliance with, Title 33, Chapter 20 of the Montana Code Annotated.

IN WITNESS OF THIS APPOINTMENT, said Viatical Settlement Broker, pursuant to a resolution duly adopted by its Board of Directors, has caused this instrument to be executed in its name by its President and Secretary, and its corporate seal to be affixed, at the City of _____, State of _____ this ____ day of _____, 20____.

President / Attorney-in-fact

Secretary / Attorney-in-fact

Name and address of the person to whom Service of Process is to be forwarded.

(VIATICALBROKER.SP)

INDEMNITY BOND
VIATICAL SETTLEMENT BROKER

BOND No. _____

AMOUNT _____

Know All Men By These Presents, that _____, hereinafter called the Principal, and _____, a corporation authorized to transact insurance business within the state of Montana, as Surety, are held and firmly bound unto the State of Montana, hereinafter called the Obligee in the sum of Fifty Thousand and No/100 Dollars (\$50,000.00) for the payment whereof to the Obligee, the Principal and Surety hereby bind themselves, their successors and assigns, jointly and severally firmly by these presents.

The condition of this obligation is such that the above Principal has made application to the Obligee for a certificate of authority to engage in the business of Viatical Settlement Broker within the State of Montana and will function as such. The Principal shall, in accordance with the provisions of its Viatical Settlement Broker certificate of authority, comply with the applicable laws of the State of Montana and assure the faithful performance of its obligations to its viators. If the Principal is complying with the provisions of its license and is faithfully performing its obligations to viators, then this obligation shall be null and void; otherwise, this obligation remains in full force and effect.

Provided, however, that the liability of the Surety hereunder shall in no event exceed the penal sum of this bond as stated above, regardless of the number of years the bond shall continue in force; and it is expressly agreed that either the principal or surety may cancel this bond by giving thirty (30) days written notice to the other, provided however, that such cancellation shall not be effective so far as the Obligee is concerned until the expiration of thirty (30) days after written notice has been given to said Obligee by the Surety. Such notice shall be delivered to the Obligee at the Office of the Insurance Commissioner of the State of Montana.

SIGNED, SEALED AND DATED THIS _____ DAY OF _____, 20____.

ATTEST:

(Name of Provider)

By: _____

ATTEST:

(Name of Surety)

By: _____

Viatical Settlement Broker Report

Calendar year

Viatical Settlement Broker's Name

All States and Territories

200

	1	2	3	4	5	6	7
States	Are you doing business in this state? (Y/N)	Total number of policies reviewed for consideration	Total number of policies represented for viatical	Total number of policies where representation was refused	Total number of policies sold to a provider	Aggregate net death benefit viatical	Aggregate net amount paid to viators
Alabama							
Alaska							
Arizona							
Arkansas							
California							
Colorado							
Connecticut							
Delaware							
Dist. of Columbia							
Florida							
Georgia							
Hawaii							
Idaho							
Illinois							
Indiana							
Iowa							
Kansas							
Kentucky							
Louisiana							
Maine							
Maryland							
Massachusetts							
Michigan							
Minnesota							
Mississippi							
Missouri							
Montana							
Nebraska							
Nevada							
New Hampshire							

	1	2	3	4	5	6	7
States	Are you doing business in this state? (Y/N)	Total number of policies reviewed for consideration	Total number of policies represented for viatical	Total number of policies where representation was refused	Total number of policies sold to a provider	Aggregate net death benefit viatical	Aggregate net amount paid to viators
New Jersey							
New Mexico							
New York							
North Carolina							
North Dakota							
Ohio							
Oklahoma							
Oregon							
Pennsylvania							
Rhode Island							
South Carolina							
South Dakota							
Tennessee							
Texas							
Utah							
Vermont							
Virginia							
Washington							
West Virginia							
Wisconsin							
Wyoming							
American Samoa							
Guam							
Puerto Rico							
U.S. Virgin Islands							
Canada							
Totals							

VSF 001

Initials of preparer: _____

Viatical Settlement Broker Reporting—All States and Territories Instructions

NOTE: This form must be accompanied by “Viatical Settlement Provider/Broker Certification Form.”

1. Indicate (Y or N) to all the states and territories where you are currently doing business.

- Indicate the total number of policies you reviewed for consideration for that state or
2. territory.

3. Indicate the total number of policies you represented for viatication in that state or territory.

- Indicate the total number of policies you refused to represent for that state or
4. territory.

5. Total number of policies sold to a provider.

6. List the total aggregate net amount of the policies you transacted for viatication in that state or territory.

7. Regarding transaction where you functioned as a broker, list the total aggregate net amount paid to viators in that state or territory.

year

Viatical Settlement Broker's Name

200_____

[illegible]

Initials of preparer: _____

Viatical Settlement Broker Report—[State] Insureds Only Instructions

NOTE: *This form must be accompanied by “Viatical Settlement Provider/Broker Certification Form.”*

1. List the settlement number, case number, or unique identifying number used by the Viatical Settlement Provider to identify the specific viatical settlement transaction.
2. List the date sold of the viatical settlement contract to the Viatical Settlement Provider.
3. List the total net death benefit.
4. List the net amount (in dollars) paid to the viator.
5. List the amount of commissions (in dollars) paid to all viatical settlement brokers involved in the transaction.
6. List the name of the Viatical Settlement Provider involved in the viatical settlement transaction.

VSB 002 Instructions

Initials of preparer: _____

Viatical Settlement Provider/Broker Certification Form

This section should be completed by viatical settlement providers.

Please check all forms submitted:

- ☐ Viatical Settlement Provider Reporting Form - All States and Territories (VSP 001)
- ☐ Viatical Settlement Provider Reporting Form - [State] Viators Only (VSP 002)
- ☐ Individual Mortality Report - [State] Insureds Only (VSP 003)

I hereby certify that the information contained in the reports indicated above is true and accurate. I acknowledge that providing false and misleading information in the reports, or failing to divulge a fact material thereto, is sufficient grounds for administrative action by the commissioner and potentially, applicable criminal penalties

Signature of individual that prepared reports

Date: ____/____/____

Print or type name

Signature of Authorized Representative

Date: ____/____/____

Print or type name

This section should be completed by viatical settlement brokers.

Please check all forms submitted:

☐ Viatical Settlement Broker Reporting Form - [All States and Territories] (VSB 001)

☐ Viatical Settlement Provider Reporting Form - [State] Viators Only (VSB 002)

I hereby certify that the information contained in the reports VSB 001, VSB 002 and VSPB 001 indicated above is true and accurate. I acknowledge that providing false and misleading information in the reports, or failing to divulge a fact material thereto, is sufficient grounds for administrative action by the commissioner and potentially, applicable criminal penalties

Signature of individual that prepared reports

Date: ____/____/____

Print or type name

Signature of Authorized Representative

Date: ____/____/____

Print or type name

VSPB 001

MONTANA CODED ANNOTATED 2005

TITLE 33. INSURANCE AND INSURANCE COMPANIES CHAPTER 20. LIFE INSURANCE

Part 13. Viatical Settlements

33-20-1301. Short title. This part may be cited as the "Viatical Settlement Act".

History: En. Sec. 1, Ch. 298, L. 1997.

33-20-1302. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Financing entity" means an underwriter, placement agent, lender, or any entity, other than a nonaccredited investor, that has a direct ownership in a policy or certificate that is the subject of a viatical settlement contract, whose sole activity related to the transaction is the provision of funds to effect the viatical settlement contract, and who has an agreement in writing with one or more licensed viatical settlement providers.

(2) "Related provider trust" means a trust established by a licensed viatical settlement provider or a financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust must have a written agreement with the viatical settlement provider under which the licensed viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner.

(3) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets for a financing entity or licensed viatical settlement provider.

(4) (a) "Viatical settlement broker" means an individual who, for a fee, commission, or other consideration:

(i) offers or advertises the availability of viatical settlement contracts;

(ii) introduces holders of life insurance policies or certificates insuring the lives of individuals with a terminal illness or condition to viatical settlement providers; or

(iii) offers or attempts to negotiate viatical settlement contracts between the policyholders or certificate holders and one or more viatical settlement providers.

(b) Viatical settlement broker does not mean an attorney, accountant, or financial planner retained to represent the policyholder or certificate holder unless compensation paid to the attorney, accountant, or consultant is paid by the viatical settlement provider.

(5) (a) "Viatical settlement contract" means a written agreement establishing the terms under which compensation or anything of value will be paid, when the compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of any portion of the insurance policy or certificate of insurance.

(b) The term includes:

(i) a contract for a loan or other financing transaction with a viator secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy; or

(ii) an agreement with a viator to transfer ownership or change the beneficiary designation at a later date regardless of the date that compensation is paid to the viator.

(c) The term does not mean a written agreement entered into between a viator and a person having an insurable interest in the viator's life.

(6) (a) "Viatical settlement provider" means a person who solicits, enters into, or negotiates viatical

settlement contracts or offers to enter into or negotiate viatical settlement contracts.

(b) Viatical settlement provider does not mean:

(i) a bank, savings bank, savings and loan association, credit union, or other licensed lending institution that takes an assignment of a life insurance policy only as collateral for a loan;

(ii) an insurer issuing a life insurance policy providing accelerated benefits pursuant to [33-20-127](#) or pursuant to the laws of the state to which the policy was subject when issued;

(iii) an individual who enters into a single agreement in a calendar year for the transfer of life insurance policies for any value less than the expected death benefit; or

(iv) any corporation, partnership, or partner that purchases a life insurance contract of an employee or retiree of the corporation or of a partner. The settlement made on any contract exempt under this section must be reasonable and subject to the standards imposed on licensees under [33-20-1304](#).

(7) (a) "Viatical settlement purchase agreement" means a contract or agreement entered into by a viatical settlement purchaser with a viatical settlement provider to purchase a life insurance policy or an interest in a life insurance policy for the purpose of deriving an economic benefit.

(b) A viatical settlement purchase agreement does not include a viatical settlement contract.

(8) (a) "Viatical settlement purchaser" means a person who, for the purpose of deriving an economic benefit:

(i) gives consideration for a life insurance policy or an interest in the death benefits of a life insurance policy; or

(ii) owns, acquires, or is entitled to a beneficial interest in a trust that owns a viatical settlement contract or that is the beneficiary of a life insurance policy that has been or will be the subject of a viatical settlement contract.

(b) A viatical settlement purchaser does not include a licensed viatical settlement provider, a licensed viatical settlement broker, a qualified institutional buyer as defined in 17 CFR 230.144A, a financing entity, a special purpose entity, or a related provider trust.

(9) (a) "Viator" means the owner of a life insurance policy or the certificate holder under a group policy who enters or seeks to enter into a viatical settlement contract.

(b) The term does not include a licensed viatical settlement provider, a licensed viatical settlement broker, a qualified institutional buyer as defined in 17 CFR 230.144A, a financing entity, a special purpose entity, or a related provider trust.

History: En. Sec. 2, Ch. 298, L. 1997; amd. Sec. 2, Ch. 295, L. 2001; amd. Sec. 7, Ch. 493, L. 2003.

33-20-1303. License requirements. (1) A person may not act as or purport to be a viatical settlement provider unless licensed as a viatical settlement provider under this part.

(2) (a) Except as provided in subsection (2)(b) and (2)(c), a person may not broker, solicit, or negotiate viatical settlement contracts between a viator and one or more viatical settlement providers or otherwise act on behalf of a viator without first having obtained a license as a viatical settlement broker from the commissioner. An applicant for a viatical settlement broker's license shall:

(i) attend required viatical settlement broker training and pass a viatical settlement broker examination designated by the commissioner by rule; and

(ii) pay a fee for an original viatical settlement broker's license pursuant to [33-2-708](#). The fees for license renewal and lapsed license reinstatement for a viatical settlement broker's license are as provided in [33-2-708](#).

(b) A resident or nonresident insurance producer must be considered to meet the licensing requirements of a viatical settlement broker and must be permitted to operate as a viatical settlement broker if the insurance producer is licensed as an insurance producer with a life insurance line of authority in this state or in the insurance producer's home state and has been licensed for at least 1 year. In addition:

(i) not later than 30 days from the first day of operating as a viatical settlement broker, the insurance producer shall notify the commissioner, on a form or in a manner prescribed by the commissioner, that the insurance producer is acting as a viatical settlement broker and shall pay a fee pursuant to [33-2-708](#)(1)(b)(viii). The notification must include an acknowledgment by the insurance producer that the insurance producer will operate as a viatical settlement broker in accordance with this part.

(ii) regardless of the manner in which the insurance producer is compensated, the insurance producer

must be considered to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.

(c) If requested by the commissioner, a life insurance producer acting as a viatical settlement broker under this subsection (2) who has previously complied with subsection (2)(b)(i) shall report to the commissioner when renewing a resident or nonresident life insurance producer's license regarding the life insurance producer's intent to continue to act as a viatical settlement broker. The statement regarding an intent to continue acting as a viatical settlement broker must be made on the life insurance producer's license renewal form. A person who makes a statement pursuant to this subsection (2)(c) may not be charged an additional fee.

(d) The provisions of subsections (2)(a) and (2)(b) do not prohibit a person licensed as an attorney, certified public accountant, or certified financial planner who is accredited by a nationally recognized accreditation agency, who is retained to represent the viator, and whose compensation is not paid directly or indirectly by the viatical settlement provider from negotiating viatical settlement contracts without having to obtain a license as a viatical settlement broker.

(3) Regardless of the manner in which a viatical settlement broker or insurance producer is compensated, the viatical settlement broker or insurance producer must be considered to represent only the viator and the viatical settlement broker or insurance producer owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interests of the viator.

(4) (a) In order to obtain a license to transact business as a viatical settlement provider or as a viatical settlement broker, if required to obtain a viatical settlement broker's license under the provisions of subsection (2)(a), an applicant shall apply for the license in a form approved by the commissioner and shall pay the fee required for the application.

(b) The commissioner may request biographical, organizational, locational, financial, employment, and other information on the application form that the commissioner determines to be relevant to the evaluation of applications and to the granting of the license. The commissioner may require a statement of the business plan or plan of operation of the applicant. The commissioner shall require an applicant for a viatical settlement provider license to file with the application for the commissioner's approval a copy of the viatical settlement contract that the applicant intends to use in business under the license.

(c) If an applicant is a corporation, the corporation must be:

(i) incorporated or organized under the laws of this state; or

(ii) a foreign corporation authorized to transact business in this state.

(d) If the applicant is a partnership, the partnership must be organized under the laws of this state.

(5) (a) An individual licensed as a viatical settlement broker must meet the continuing education requirements in [33-17-1203](#).

(b) The hours of continuing education required under subsection (4)(a) must be in the subjects of life insurance, viaticals, or ethics.

(c) For an individual licensed as a viatical settlement broker, the 24-month period for meeting the continuing education requirements must correlate with the broker's license renewal period.

(d) The viatical settlement broker's license of an individual who fails to comply with this continuing education requirement and who has not been granted an extension of time to comply in accordance with [33-17-1203](#)(3) must be terminated and promptly surrendered to the commissioner.

History: En. Sec. 3, Ch. 298, L. 1997; amd. Sec. 2, Ch. 552, L. 2005.

33-20-1304. Issuance of license. (1) The commissioner may issue a license to the applicant if the commissioner determines that the applicant:

(a) has satisfied all of the requirements for the license for which an application is made;

(b) has not engaged in conduct that would authorize the commissioner to refuse to issue a license under this part; and

(c) is financially responsible and has a good business reputation.

(2) The commissioner may issue a license to a nonresident applicant only if the nonresident applicant files with the commissioner in writing an appointment of the commissioner to be the agent of the applicant upon whom all legal process in any action or proceeding against the applicant may be served. In the appointment, the applicant shall agree that any lawful process against the applicant that is served upon the commissioner is of the same legal force and validity as if served upon the applicant and that the

authority will continue in force as long as any liability remains outstanding in this state. An appointment under this subsection becomes effective on the date that the commissioner issues the license to the applicant.

(3) If the commissioner denies an application, the commissioner shall inform the applicant and state the grounds for the denial.

(4) An individual may act as a viatical settlement provider or viatical settlement broker under the authority of the license of a firm or of a corporate viatical settlement provider whether or not the individual holds a license as a viatical settlement provider if:

(a) the individual is a member or employee of the firm or is an employee, officer, or director of the corporation; and

(b) the individual is designated by the firm or corporation on its license application or on a form that amends or supplements the application as being authorized to act as a viatical settlement provider under the authority of the license.

History: En. Sec. 4, Ch. 298, L. 1997.

33-20-1305. Expiration of license. (1) A license issued under this part expires on its expiration date unless it is renewed on or before its expiration date.

(2) Unless the commissioner designates another date, a license expires on the last day of the month in which the second anniversary of the initial issuance date of the license occurs and on the last day of the month of the second anniversary following each renewal.

History: En. Sec. 5, Ch. 298, L. 1997.

33-20-1306. Notification by licensee of material change affecting qualification for license. A licensee shall immediately notify the commissioner of any material change in ownership or control or in any other matter affecting the qualification of the licensee for the license in this state, including keeping the commissioner informed about personnel and address changes.

33-20-1307. Suspension -- revocation -- refusal to issue or renew license. (1) The commissioner may suspend, revoke, refuse to issue, or refuse to renew a license if the commissioner determines that the licensee or applicant for a license is untrustworthy or incompetent to act as a licensee or is guilty of one or more of the following:

(a) dishonesty, fraud, or gross negligence in the conduct of business as a licensee;

(b) a pattern of unreasonable payments to policyholders or certificate holders;

(c) falsification of an application for the license or renewal of the license or misrepresentation or engagement in any other dishonest act in relation to the application;

(d) conduct resulting in a conviction of a felony under the laws of any state or of the United States;

(e) conviction of any crime, an essential element of which is dishonesty or fraud, under the laws of any state or of the United States;

(f) refusal to renew or cancellation, revocation, or suspension of authority to transact insurance or business as a viatical settlement provider, viatical settlement broker, or similar entity in another state;

(g) failure to pay a civil penalty imposed by final order of the commissioner or to carry out terms of probation set by the commissioner;

(h) refusal by a licensee to be examined or to produce accounts, records, or files for examination, refusal by any officers or employees to give information with respect to the affairs of the licensee, or refusal to perform any other legal obligation as to the examination, when required by the commissioner;

(i) affiliation with or under the same general management or interlocking directorate or ownership as another viatical settlement provider, viatical settlement broker, or insurer, any of which unlawfully transacts business in this state;

(j) failure at any time to meet any qualification for which issuance of the license could have been refused had the failure then existed and been known to the commissioner; or

(k) violation of any rule or order of the commissioner or any provision of Montana law.

(2) The commissioner may suspend or refuse to renew a license immediately and without hearing if

the commissioner determines that one or both of the following circumstances exist:

(a) the licensee is insolvent;

(b) the financial condition or business practices of the licensee otherwise pose an imminent threat to the public health, safety, or welfare of the residents of this state.

(3) The commissioner may refuse to issue a license in the name of any firm, partnership, or corporation if the commissioner believes that any officer, employee, stockholder, or partner who may materially influence the conduct of the applicant does not meet the standards of this section.

(4) A viatical settlement provider or viatical settlement broker holding a license that has not been renewed or that has been revoked shall surrender the license to the commissioner at the commissioner's request.

(5) The commissioner may take any other administrative action authorized under Montana law in addition to or in lieu of the actions authorized under this part.

History: En. Sec. 7, Ch. 298, L. 1997.

33-20-1308. Terms of contract. (1) A viatical settlement contract must be in writing. A viatical settlement provider shall establish in the contract the terms under which the viatical settlement provider will pay compensation or anything of value in return for the policyholder's or certificate holder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

(2) A viatical settlement provider may not use a viatical settlement contract in this state unless the viatical settlement provider has filed the contract form with the commissioner and the commissioner has approved the contract form according to the provisions set forth in [33-1-501](#). The commissioner shall disapprove a viatical settlement contract form if, in the commissioner's judgment, the contract or any provision of the contract is unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the policyholder or certificate holder.

(3) Each viatical settlement contract entered into in this state must contain a provision enabling the policyholder or certificate holder to rescind the contract not later than the 30th day after the date on which the contract is executed by all parties or not later than the 15th day after the policyholder or certificate holder receives the viatical settlement proceeds, whichever is the longer period. In order to rescind a contract, a policyholder or certificate holder who has received the proceeds shall return them to the viatical settlement provider.

History: En. Sec. 8, Ch. 298, L. 1997.

33-20-1309. Annual report by provider. Unless the commissioner grants a time extension, a viatical settlement provider shall file a report for the preceding calendar year with the commissioner on or before March 1 of each year. The report must be in the form and must contain the information that the commissioner prescribes. The report must be verified as follows:

(1) if the viatical settlement provider is a corporation, by at least two principal officers of the viatical settlement provider;

(2) if the viatical settlement provider is a partnership, by two partners; or

(3) if the viatical settlement provider is not a corporation or a partnership, by the provider's owner and manager.

History: En. Sec. 9, Ch. 298, L. 1997.

33-20-1310. Examination of business and practices of licensee or applicant -- maintenance of business records. (1) The commissioner may examine the business and practices of any licensee or applicant for a license when the commissioner determines an examination to be necessary. The commissioner may order a licensee or applicant to produce any records, books, files, or other information reasonably necessary to ascertain whether the licensee or applicant is acting or has acted in violation of the law or contrary to the interests of the public. The licensee or applicant shall pay the expenses incurred in conducting an examination.

(2) A viatical settlement provider shall maintain records of all transactions of viatical settlement

contracts of the viatical settlement provider and shall make the records available to the commissioner for inspection during reasonable business hours. The records must be maintained for a period of not less than 5 years from the date of their creation.

(3) The commissioner may at any time require a licensee to fully disclose the identity of all stockholders, partners, officers, and employees.

(4) The names of and individual identification data for all policyholders and certificate holders who have entered viatical settlement contracts with viatical settlement providers are confidential and may not be disclosed except in cases in which the commissioner determines that the merits of public disclosure exceed the demands of individual privacy.

History: En. Sec. 10, Ch. 298, L. 1997; amd. Sec. 10, Ch. 416, L. 1999.

33-20-1311. Disclosure of information to policyholder. A viatical settlement provider shall disclose the information specified in this section to the policyholder or certificate holder entering the viatical settlement contract prior to the date on which the viatical settlement contract is signed by all parties. The disclosure must be in the form approved by the commissioner. The information must include the following:

(1) possible alternatives to viatical settlement contracts for persons with terminal illnesses or conditions, including but not limited to accelerated benefits offered by the issuer of the life insurance policy;

(2) the fact that some or all of the proceeds of the viatical settlement may be taxable and that assistance should be sought from a personal tax adviser. Viatical settlement brokers, viatical settlement providers, or their respective employees or agents may not act as personal tax advisers for purposes of this disclosure requirement.

(3) the fact that the viatical settlement could be subject to the claims of creditors;

(4) the fact that receipt of a viatical settlement may adversely affect the recipient's eligibility for medicaid or other government benefits or entitlement and that advice should be obtained from the appropriate agencies;

(5) the right of a policyholder or certificate holder to rescind a viatical settlement contract as provided in [33-20-1308](#). The disclosure must state the deadlines for rescission and the return of proceeds received.

(6) the date by which the funds will be available to the policyholder or certificate holder and the source of the funds; and

(7) the fact that the viatical settlement contract is void if the viatical settlement provider or viatical settlement broker fails to tender payment of the proceeds as provided in the viatical settlement contract.

History: En. Sec. 11, Ch. 298, L. 1997; amd. Sec. 3, Ch. 295, L. 2001.

33-20-1312. Conditions precedent to entering into viatical settlement contract. (1) Before a viatical settlement provider enters into a viatical settlement contract with a policyholder or certificate holder who has a terminal illness or condition, the viatical settlement provider shall first obtain the following:

(a) a written statement from an attending physician that the policyholder or certificate holder is of sound mind and not under constraint or undue influence; and

(b) a witnessed document in which the policyholder or certificate holder:

(i) consents to the viatical settlement contract;

(ii) acknowledges that the illness or condition is terminal;

(iii) represents that the policyholder or certificate holder has a full and complete understanding of the viatical settlement contract;

(iv) confirms that the policyholder or certificate holder has a full and complete understanding of the benefits of the life insurance policy;

(v) releases the medical records of the policyholder or certificate holder relating to the terminal illness or condition; and

(vi) acknowledges that the policyholder or certificate holder has entered into the viatical settlement contract freely and voluntarily.

(2) A viatical settlement provider may enter a viatical settlement contract only after the individual whose life would be the subject of the viatical settlement contract is determined to have a terminal illness

or condition, as follows:

(a) if the individual is the policyholder or certificate holder, an attending physician of the policyholder or certificate holder shall make the determination; or

(b) if the individual is a person other than the policyholder or certificate holder, an attending physician of the individual or of the policyholder or certificate holder shall make the determination.

(3) For purposes of this section, "attending physician" means a medical doctor, a doctor of osteopathy, or a naturopathic physician licensed in this state, who is primarily responsible for the treatment or a portion of treatment of the individual whose life would be the subject of the viatical settlement contract.

History: En. Sec. 12, Ch. 298, L. 1997.

33-20-1313. Requirements for entering into viatical settlement contract -- prohibitions on finder's fee -- solicitations -- discrimination -- false or misleading advertising or solicitation -- misuse of confidential information. (1) A person may not enter into a viatical settlement contract within a 2-year period from the date of issuance of an insurance policy or certificate unless the person certifies to the viatical settlement provider that one or more of the following conditions have been met within the 2-year period:

(a) (i) the policy or certificate was issued upon the person's exercise of conversion rights arising out of a group or individual policy or certificate and the total of the time covered under the conversion policy or certificate plus the time covered by the policy or certificate prior to the conversion equal at least 24 months; and

(ii) the time covered under a group policy or certificate was calculated without regard to any change in insurance carriers if the coverage was continuous and under the same group sponsorship; or

(b) the person submits independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the 2-year period:

(i) the person is terminally ill or chronically ill; or

(ii) the person has disposed of the person's ownership interest in a closely held corporation pursuant to the terms of a buyout agreement or similar agreement that was in effect at the time that the insurance policy or certificate was issued.

(2) Copies of the certification and independent evidence required under subsection (1) must be submitted by the viatical settlement provider to the insurer when the viatical settlement provider submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

(3) A licensee may not pay or offer to pay a finder's fee, commission, or other compensation to a person described in this subsection (3) in connection with a policy insuring the life of an individual with a terminal illness or condition. The prohibition under this subsection (3) applies with respect to payments or offers of payment to:

(a) the physician, attorney, or accountant of the policyholder, the certificate holder, or the insured individual;

(b) any person other than a physician, attorney, or accountant described in subsection (3)(a) who provides medical, legal, or financial planning services to the policyholder, to the certificate holder, or to the insured individual when the individual is other than the policyholder or certificate holder; or

(c) any person other than one described in subsection (3)(a) or (3)(b) who acts as an agent of the policyholder, certificate holder, or insured individual.

(4) A licensee may not solicit an investor who could influence the treatment of the illness or condition of the individual whose life would be the subject of a viatical settlement contract.

(5) All information solicited or obtained from a policyholder or certificate holder by a licensee is subject to the confidentiality requirements set forth in Title 33, chapter 19. For purposes of this subsection, a licensee must be considered an insurance-support organization as defined in [33-19-104](#).

(6) A licensee may not discriminate in the making of a viatical settlement contract on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status, or sexual orientation and may not discriminate between persons who have dependents and persons who do not have dependents.

(7) A person licensed pursuant to [33-20-1304](#) may not engage in any false or misleading advertising,

solicitation, or practice as described in [33-18-203](#).

(8) A person licensed pursuant to [33-20-1304](#) may not sell another product of insurance to the contract holder unless approval is obtained from the commissioner.

History: En. Sec. 13, Ch. 298, L. 1997; amd. Sec. 3, Ch. 552, L. 2005.

33-20-1314. Payment to escrow or trust account -- lump-sum payment. (1) Immediately upon receipt of documents from the policyholder or certificate holder effecting the transfer of the insurance policy or certificate, the viatical settlement provider shall pay the proceeds of the settlement to an escrow or trust account managed by a trustee or escrow agent in a bank approved by the commissioner, pending acknowledgment of the transfer by the issuer of the life insurance policy. The trustee or escrow agent shall transfer the proceeds due to the policyholder or certificate holder immediately upon receipt of acknowledgment of the transfer from the insurer.

(2) A viatical settlement provider shall make payment of the proceeds of a viatical settlement contract in a lump sum except as provided in this subsection. A viatical settlement provider may not retain any portion of the proceeds. A viatical settlement provider may make installment payments only if the viatical settlement provider has purchased an annuity issued by an authorized insurer or a similar financial instrument issued by a financial institution authorized to engage in the business of a financial institution in this state.

(3) Failure by the viatical settlement provider to tender the viatical settlement by the date disclosed to the policyholder or certificate holder renders the contract void.

History: En. Sec. 14, Ch. 298, L. 1997.

33-20-1315. Rules -- standards -- bond. The commissioner may, in accordance with the provisions of [33-1-313](#), adopt rules for the purpose of carrying out this part. In addition, the commissioner:

(1) may establish standards for evaluating reasonableness of payments under viatical settlement contracts for insured persons who are terminally ill or chronically ill. The authority includes but is not limited to regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a life insurance policy. For the purpose of the standards, the commissioner shall consider payments made in regional and national viatical settlement markets to the extent that this information is available, as well as model standards developed by the national association of insurance commissioners. When the insured is not terminally ill or chronically ill, the commissioner may not establish standards for evaluating the reasonableness of payments, except that a viatical settlement provider shall pay an amount greater than the greater of the cash surrender value or the accelerated death benefit then available.

(2) shall require a bond or other mechanism for financial accountability of viatical settlement providers and viatical settlement brokers; and

(3) shall adopt rules to establish:

(a) trade practice standards for the purpose of regulating advertising and solicitation of viatical settlement contracts;

(b) fees that are commensurate with fees charged pursuant to [33-2-708](#); and

(c) the continuing education program provided for in [33-20-1303](#)(4).

History: En. Sec. 15, Ch. 298, L. 1997; amd. Sec. 8, Ch. 493, L. 2003; amd. Sec. 4, Ch. 552, L. 2005

33-20-1316. Service of process. (1) For viatical settlement providers, the provisions of Title 33, chapter 1, part 6, apply.

(2) For viatical settlement brokers, the provisions of [33-17-405](#) apply.

33-20-1317. Disclosure of information to viatical settlement purchasers. (1) A viatical settlement provider shall disclose the information specified in this section to a viatical settlement purchaser prior to the date on which the parties sign the viatical settlement purchase agreement.

(2) The viatical settlement purchaser shall date and sign the information disclosure. The viatical

settlement provider shall provide a copy of the information disclosure to the viatical settlement purchaser.

(3) The information disclosure must include the following:

(a) that the viatical settlement purchaser will not receive payment until the insured dies;

(b) that the actual annual rate of return on a viatical settlement purchase agreement is dependent upon an accurate projection of the insured's life expectancy and the actual date of the insured's death and that an annual guaranteed rate of return is not determinable;

(c) that the viatical insurance contract is not a liquid purchase since it is impossible to predict the exact timing of its maturity, that the funds are probably not available until the death of the insured, and that there is not an established secondary market for the resale of viatical settlement products by the viatical settlement purchaser;

(d) that the viatical settlement purchaser may lose all benefits or may receive substantially reduced benefits if the insurer goes out of business during the term of the viatical settlement investment;

(e) (i) that the viatical settlement purchaser is responsible for payment of the insurance premium or other costs related to the policy, if required by the terms of the viatical purchase agreement, and that these payments may reduce the viatical settlement purchaser's return and may continue beyond the insured's projected life expectancy; and

(ii) if a party other than the viatical settlement purchaser is responsible for the payment, that the name of that party must also be disclosed;

(f) the amount of the premium that a purchaser is required to pay, if applicable;

(g) that the viatical settlement purchaser may be responsible for payment of the insurance premium or other costs related to the policy if the insured returns to health;

(h) the amount of any fees or other expenses to be charged to the viatical settlement purchaser;

(i) whether or not the viatical settlement purchaser is entitled to a refund of all or part of the investment under the viatical settlement purchase agreement if the policy is later determined to be void;

(j) that group policies:

(i) may contain limitations on conversion rights;

(ii) may require additional premiums to be paid if the group policy is converted; and

(iii) may be terminated and replaced by another group policy, with benefits under the new policy that may be substantially less than those in the original coverage;

(k) for group policies, the name of the party responsible for the payment of any additional premiums;

(l) that there are risks associated with policy contestability, including the risk that the viatical settlement purchaser may not have a claim or may have only a partial claim to death benefits if the insurer rescinds the policy within the contestability period;

(m) whether or not the viatical settlement purchaser will be the beneficiary or owner of the policy and, if the viatical settlement purchaser is the beneficiary, the special risks associated with beneficiary status, including the risk that the beneficiary may be changed;

(n) a description of:

(i) the experience and qualifications of the person who has determined the life expectancy of the insured, such as in-house staff, independent physicians, or specialty firms that weigh medical and actuarial data;

(ii) the information on which the projection of life expectancy is based; and

(iii) the relationship of the person who has made the determination of life expectancy to the viatical settlement provider, if any;

(o) all of the life expectancies obtained in the process of determining the price paid to the policyholder or certificate holder;

(p) a description and amount of any loan or other encumbrance against or in connection with the policy; and

(q) that the viatical settlement purchaser is encouraged to consult with an attorney, accountant, or financial planner who is not affiliated with the viatical settlement broker or viatical settlement provider prior to purchase.

History: En. Sec. 4, Ch. 295, L. 2001; amd. Sec. 72, Ch. 114, L. 2003.

BEFORE THE STATE AUDITOR AND COMMISSIONER OF INSURANCE
OF THE STATE OF MONTANA

In the matter of the amendment) NOTICE OF AMENDMENT,
of ARM 6.6.8501, 6.6.8505,) REPEAL AND ADOPTION
6.6.8507, and 6.6.8508; repeal)
of ARM 6.6.8506; and adoption)
of New Rules I through III,)
(ARM 6.6.8510, 6.6.8511 and)
6.6.8512) relating to viatical)
settlement agreements)

TO: All Concerned Persons

1. On August 19, 2004, the State Auditor's Office published MAR Notice No. 6-149 relating to the public hearing on the viatical settlement agreements, at page 1877 of the 2004 Montana Administrative Register, issue no. 16.

2. On September 9, 2004, a public hearing was held in Helena, Montana, and members of the public spoke at the public hearing. In addition, a written comment was received prior to the closing of the comment period.

3. ARM 6.6.8501, 6.6.8505, 6.6.8507, and 6.6.8508 are amended as proposed but with the following changes, stricken material interlined, new material underlined:

6.6.8501 DEFINITIONS In addition to the definitions in 33-20-1302, MCA, the following definitions apply to this subchapter:

(1) "Advertising" means any written, electronic or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet or similar communications media, including film strips, motion pictures and videos, published, disseminated, circulated or placed before the public, directly or indirectly, for the purpose of creating an interest in or inducing a person to purchase or sell a life insurance policy or an interest in a life insurance policy pursuant to a viatical settlement contract or a viatical settlement purchase agreement.

(1) through (2) remain as proposed, but are renumbered (2) through (3).

~~(3)~~ (4) "Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider a physician or physicians considering medical records and appropriate experiential data. A physician making this determination must have a valid license to practice medicine or osteopathic medicine in this state or another state.

~~(4)~~ (5) "Net death benefit" means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens, then owing to the insurer providing coverage under the subject life insurance policy.

(5) through (5)(a) remain as proposed, but are renumbered (6) through (6)(a).

(b) an insured's photograph or likeness;

(c) an insured's employer, employment status, social security number, unless the social security number is used by the insurer as a means of identifying the subject policy; or

(5)(d) remains as proposed, but is renumbered (6)(d).

~~(6)(7)~~ "Terminally ill" means having an illness ~~or sickness~~ that can reasonably be expected to result in death ~~in and having a life expectancy of~~ 24 months or less.

AUTH: 33-1-313, 33-20-1315, MCA
IMP: 33-20-1302, MCA

COMMENT 1: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, questioned whether the word "mean" in the definition of "life expectancy" in proposed ARM 6.6.8501(4) referred to a mathematical average.

RESPONSE 1: The Department agrees that "mean" refers to a mathematical average.

COMMENT 2: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, suggested that a viatical settlement provider ordinarily would not determine an insured's life expectancy and therefore, the phrase "as determined by the viatical settlement provider" in the definition of "life expectancy" in proposed ARM 6.6.8501(4) would exclude estimates of life expectancy determined by the insured's physician or another physician qualified to make such a determination.

RESPONSE 2: The Department agrees that life expectancies are likely to be determined by physicians who are not employed by a viatical settlement provider. The words "physician or physicians" will replace the phrase "viatical settlement provider" in this definition and the definition further specifies that a physician making a life expectancy determination must be licensed in Montana or another state.

COMMENT 3: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, noted that the definition of "net death benefit" in ARM 6.6.8501(5) did not specify that the benefit should be reduced only by sums owed to the insurer.

RESPONSE 3: The Department agrees with the commenter that "net death benefit" should mean the amount of the policy less any debts owed to the insurer and added language suggested by the commenter to make this clear.

COMMENT 4: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, observed that some insurers use social security numbers as a means of identifying insurance policies. He suggested that language in the definition of "patient identifying information" in ARM 6.6.8501(6) that would limit use of a patient's social security number would be problematic in cases in which the insurer used a patient's social security number to refer to that person's insurance policy.

RESPONSE 4: The Department agrees that this could be a problem and added the commenter's language permitting uses of social security number where the insurer uses the number to identify a person's specific policy.

COMMENT 5: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, remarked that it would be

beneficial to clarify how it would be determined that an individual had a terminal illness for the purpose of meeting the definition of the term in ARM 6.6.8501(7).

RESPONSE 5: The Department believes that a physician should determine whether a person is terminally ill. In order to ensure that this determination is made by a physician, this rule refers to the definition of life expectancy in ARM 6.6.8501(4) which mandates that a life expectancy must be determined by a physician with a license to practice medicine.

COMMENT 6: The commenter, a representative of the American Council of Life Insurers, noted that "chronically ill" was defined in ARM 6.6.8501 but not used elsewhere in the rules.

RESPONSE 6: After reviewing laws in other states, the Department determined that chronically ill individuals who were not terminally ill were, in some states, given additional protection in the rules quantifying standards for reasonable payments under viatical settlement contracts. In order to protect chronically ill viators, the department believes it is necessary to set a minimum payment of 30% for chronically ill viators, similar to the approach used in Washington. This approach was incorporated in ARM 6.6.8507, and therefore, the definition of "chronically ill" in ARM 6.6.8501 will be needed.

COMMENT 7: The commenter, a representative of the American Council of Life Insurers, suggested that the definition of "patient identifying information" in ARM 6.6.8501 be changed to clearly indicate that the word "patient" referred to the insured.

RESPONSE 7: The department agrees with the commenter and proposed adding the words "an insured's" where necessary to make this clarification.

COMMENT 8: Two commenters suggested that the term "advertising" be defined in ARM 6.6.8501 and suggested adding a number of substantive provisions governing advertising of viatical settlement contracts as the National Association of Insurance Commissioners' model rule contains substantive provisions regulating advertising.

RESPONSE 8: The Department has not, in this rulemaking, suggested adopting the model provisions regulating advertising as these provisions are still under consideration by the department and their adoption may be proposed in a future rulemaking. Adding substantive provisions governing advertising at this time and without giving proper notice would violate the Montana Administrative Procedure Act, and consequently, the Department will forego suggestions to broadly expand regulation of advertising in the manner proposed. However, the rules proposed in this rulemaking do make reference to advertising, and therefore, a definition of the term may be useful. The department agrees with the commenters that incorporation of the National Association of Insurance Commissioners' model definition of advertising in ARM 6.6.8501 is appropriate at this time.

COMMENT 9: Two commenters supported a change in the definition of "viatical settlement broker" to be placed in ARM 6.6.8501 that would allow licensed life insurance producers to become viatical settlement brokers through a simplified process.

RESPONSE 9: The Department has been studying the issue and is preparing to address it in a separate rulemaking, but no change to viatical settlement broker licensing was proposed in this notice of proposed rulemaking and the Department is concerned that changing the definition in the manner suggested by the commenters would be a violation of the Montana Administrative Procedure Act.

6.6.8505 DISCLOSURE (1) A disclosure document containing the disclosures required in 33-20-1311, MCA, and this rule, shall be provided ~~before or concurrent with taking~~ when an application for a viatical settlement contract is taken.

(2) The disclosure document must contain the following language:

(a) "All medical, financial, or personal information solicited or obtained by a viatical settlement ~~company~~ provider or viatical settlement broker about a viator and insured, including the viator and insured's identity or the identity of family members, ~~a spouse or a significant other,~~ is confidential."

(3) The medical, financial, or personal information solicited or obtained by a viatical settlement ~~company,~~ provider or viatical settlement broker about a viator and insured may not be disclosed in any form to any person, unless disclosure:

(a) through (4) remain as proposed.

AUTH: 33-20-1315, MCA

IMP: 33-20-1311, MCA

COMMENT 10: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, stated that it was unclear when mandatory disclosures were to take place under ARM 6.6.8505.

RESPONSE 10: The Department agrees that ARM 6.6.8505(1) should be clarified by specifying that disclosures must be made "when an application for a viatical settlement contract is taken."

COMMENT 11: The commenter, a representative of the American Council of Life Insurers, was concerned that use of the phrase "viatical settlement company" used in ARM 6.6.8505 would create an ambiguity.

RESPONSE 11: The Department agrees and changed all references to a "viatical settlement company" to "viatical settlement provider" in ARM 6.6.8505 and 6.6.8508. The term viatical settlement provider is adequately defined in 33-20-1302(6), MCA.

COMMENT 12: The commenter, a representative of the American Council of Life Insurers, proposed removing the words "significant other" from ARM 6.6.8505(2), as the phrase is undefined and may create ambiguity.

RESPONSE 12: The Department agrees that these words are undefined and may create ambiguity. To correct the problem, the Department will remove the phrase "spouse or a significant other" and simply refer to the viator and insured's family. A spouse is commonly understood to be a member of a person's family.

6.6.8507 STANDARDS FOR EVALUATION OF REASONABLE PAYMENTS

(1) In order to assure that viators receive a reasonable return

for viaticating an insurance policy, the following shall be minimum discounts:

Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loans Received by a Viator <u>Net Death Benefit</u>
Less than 6 months	80%
At least 6 but less than 12 months	70%
At least 12 but less than 18 months	65%
At least 18 but no greater than 24 months	60%
24 months or more	50%

(2) If the insured's life expectancy is 24 months or more, the viator must receive at least the greater of the cash surrender value or accelerated death benefit of the policy unless the viator is chronically ill.

(3) If the insured is chronically ill and has a life expectancy of greater than 24 months, the viator must receive at least 30% of the net death benefit.

~~(2)-(4) Except where the cash surrender value or accelerated death benefit is paid, The the percentage may be reduced by 5% for viaticating a policy written by an insurer rated less than the highest four categories by A.M. Best, or a comparable rating by another rating agency for which the insurer of the policy has an A.M. Best rating that is at or below a marginal rating.~~

AUTH: 33-20-1315, MCA

IMP: 33-20-1315, MCA

COMMENT 13: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, suggested that the defined term "net death benefit" should be used to define the minimum payment standards used to determine reasonableness of payments to viators.

RESPONSE 13: The Department agrees and used "net death benefit" throughout ARM 6.6.8507.

COMMENT 14: Two commenters suggested that a minimum payout of 50% of the net death benefit to viators with a life expectancy of greater than 24 months was excessive.

RESPONSE 14: The Department agrees and substituted the "greater of the cash surrender value or accelerated death benefit" language used in the proposed model rule promulgated by the National Association of Insurance Commissioners for viators who are not chronically ill and have a life expectancy of greater than 24 months in ARM 6.6.8507(2).

COMMENT 15: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, contended that a viator's payment should not be reduced pursuant to ARM 6.6.8507(4) in cases where the insurance policy of the insured was assumed by an insurer with a better A.M. Best rating.

RESPONSE 15: The Department agrees and amended the proposed rule so that the rating of the insurer of the policy would be used instead

of the rating of the original underwriter of the policy.

COMMENT 16: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, proposed changes to ARM 6.6.8507 that would specify that payments to a viator who received only the cash surrender value would not be reduced in cases where the insurer of the policy has a less than marginal A.M. Best rating.

RESPONSE 16: The Department agrees and changed this rule to permit reduction for a marginal rating only where the viator has received more than the cash surrender value or accelerated death benefit.

6.6.8508 GENERAL RULES (1) remains the same.

(2) Payment of the proceeds of a viatical settlement pursuant to 33-20-1314, MCA, must be by means of wire transfer to ~~the~~ an account ~~of~~ designated by the viator in a notarized writing signed by the viator or by certified check or cashier's check.

(3) remains as proposed.

(4) A viatical settlement provider, or viatical settlement broker ~~or viatical settlement representative~~ shall not discriminate, as provided in 33-20-1313, MCA, in the making or solicitation of viatical settlements ~~on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation,~~ or discriminate between viators with dependents and without.

(5) through (7) remain as proposed.

(8) A viatical settlement provider, or viatical settlement broker ~~or viatical settlement representative~~ shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator, other than a viatical settlement broker, with respect to the viatical settlement.

(9) A viatical settlement provider shall not knowingly solicit ~~investors~~ purchasers who have treated or have been asked to treat the illness of the insured whose coverage would be the subject of the investment.

(10) The following standards apply to advertising ~~a~~ of viatical ~~settlement settlements:~~

(a) through (11)(a) remain as proposed.

(b) the premiums to be paid by the viatical settlement ~~company~~ provider and the viator will be apportioned, unless the viatical settlement contract specifies that all premiums shall be paid by the viatical settlement ~~company~~ provider. The contract may also require that the viator reimburse the viatical settlement provider for the premiums attributable to the retained interest; and

(c) and (c)(i) remain as proposed.

(ii) send a copy of the instrument sent from the insurance company to the viatical settlement ~~company~~ provider that acknowledges the viator's interest in the policy.

AUTH: 33-20-1315, MCA

IMP: 33-20-1313 and 33-20-1314, MCA

COMMENT 17: The commenter, a representative of the American Council of Life Insurers, observed that the term "viatical settlement representative" is undefined and may lead to confusion.

RESPONSE 17: The Department agrees that the term may lead to confusion and in order to alleviate the problem, removed all reference to "viatical settlement representatives" in ARM 6.6.8508 and New Rule II (ARM 6.6.8511). All of the parties that are likely to be involved with viatical settlement contracts have been defined in code or in these rules, and the addition of a "viatical settlement representative" is unnecessary and confusing.

COMMENT 18: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, suggested that language in proposed ARM 6.6.8508(2) be changed to allow the viator to direct that proceeds of the sale of a policy be sent to a third party.

RESPONSE 18: The Department recognizes that some viators may appreciate the convenience of this approach but would prefer to adhere to the National Association of Insurance Commissioners' model language and allow the viator to direct the proceeds of the transaction however he or she desires after the transaction is complete. The Department made this decision in the interest of uniformity with other states and with concerns about fraud, undue influence, and duress in mind.

COMMENT 19: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, requested a change in the language of ARM 6.6.8508(2) that would allow payment of the proceeds to be made to an account designated by the viator instead of an account of the viator.

RESPONSE 19: The Department generally agrees that proceeds need not always be deposited in an account owned by the viator, but in the interest of reducing the possibility of fraud, the department would like the viator's authorization of the transfer of funds to be notarized so that it is clear that the viator specifically intended that funds be deposited in the designated account.

COMMENT 20: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, suggested that ARM 6.6.8508(4), which prohibits discrimination by viatical settlement brokers and providers, specifically refer to a non-discrimination statute in the Montana Code Annotated.

RESPONSE 20: The Department agrees that reference to statute would avoid unnecessary duplication. The commenter referred to 49-1-102, MCA; however, the Department believes that reference to 33-20-1313, MCA, in the Insurance Code is more appropriate.

COMMENT 21: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, indicated that payment of finder's fees or commissions was inappropriate except in the case of such payments to a licensed viatical settlement broker.

RESPONSE 21: The Department agrees that it is permissible for a viatical settlement broker to receive a finder's fee or commission and added language to ARM 6.6.8508 suggested by the commenter.

COMMENT 22: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers,

suggested that the term "investors" be replaced with the term "purchasers" in ARM 6.6.8508.

RESPONSE 22: The department agrees that "purchasers" is a more appropriate term as the term viatical settlement purchaser is defined at 33-20-1302(8), MCA.

4. ARM 6.6.8506 is repealed exactly as proposed.

5. New Rules I through III are adopted as proposed, but with the following changes, stricken material interlined, new material underlined:

NEW RULE I (ARM 6.6.8510) REPORTING REQUIREMENT (1) On or before March 1 of each calendar year, each viatical settlement provider licensed in this state shall make a report of all viatical settlement transactions where the viator is a resident of this state and for all states in the aggregate containing the following information submit the following related to the licensee's activities for the previous calendar year:

(a) for viatical settlements contracted during the reporting period: a report of the viatical settlement transactions in all states and territories, which shall be submitted on Form VSP 001;

(i) date of viatical settlement contract;
(ii) viator's state of residence at the time of the contract;
(iii) mean life expectancy of the insured at time of contract in months;

(iv) face amount of policy viaticated;
(v) net death benefit viaticated;
(vi) estimated total premiums to keep policy in force for mean life expectancy;

(vii) net amount paid to viator;
(viii) source of policy (b broker; d direct purchase; sm-secondary market);

(ix) type of coverage (i individual or g-group);
(x) within the contestable or suicide period, or both, at the time of viatical settlement (yes or no);

(xi) primary International Classification of Diseases (ICD) Diagnosis Code, in numeric format, as defined by the international classification of diseases, as published by the U.S. department of health and human services; and

(xii) type of funding (i institutional; p-private);

(b) for viatical settlements where death has occurred during the reporting period: a report of the viatical settlement transactions related to Montana viators, which shall be submitted on Form VSP 002;

(i) date of viatical settlement contract;
(ii) viator's state of residence at the time of the contract;
(iii) mean life expectancy of the insured at time of contract in months;

(iv) net death benefit collected;
(v) total premiums paid to maintain the policy (wp-waiver of premium; na-not applicable);

(vi) net amount paid to viator;
(vii) primary ICD Diagnosis Code, in numeric format, as defined by the ICD, as published by the U.S. department of health and human services;

(viii) date of death;

(ix) amount of time between date of contract and date of death in

months; and

~~(x) difference between the number of months that passed between the date of contract and the date of death and the mean life expectancy in months as determined by the reporting company;~~

~~(c) name and address of each viatical settlement broker through whom the reporting company purchased a policy from a viator who resided in this state at the time of contract; a report of the individual mortality of Montana insureds, which shall be submitted on Form VSP 003; and~~

~~(d) number of policies reviewed and rejected; and a certification of the information contained in the reports, which shall be submitted on Form VSPB 001 and shall be filed with the reports.~~

~~(e) number of policies purchased in the secondary market as a percentage of total policies purchased.~~

~~(2) On or before June 1 of each calendar year, each viatical settlement provider licensed in this state shall submit an annual audited financial statement, if such statements are regularly prepared by or for the viatical settlement provider in the ordinary course of business, or such other financial statements as the commissioner shall require which may include but are not limited to:~~

~~(a) a balance sheet reporting assets, liabilities, capital, and surplus;~~

~~(b) a statement of operations of the viatical settlement provider for the preceding calendar year;~~

~~(c) a statement of changes in capital and surplus; and~~

~~(d) a statement of cash flows.~~

~~(3) On or before March 1 of each calendar year, each licensed viatical settlement broker shall submit the following related to the licensee's activities for the previous calendar year:~~

~~(a) a report of the viatical settlement transactions in all states and territories, which shall be submitted on Form VSB 001;~~

~~(b) a report of the viatical settlement transactions related to Montana viators, which shall be submitted on Form VSB 002; and~~

~~(c) a certification of the information contained in the reports, which shall be submitted on Form VSPB 001 and shall be filed with the reports.~~

(4) The following materials promulgated by the national association of insurance commissioners are available from the department at 840 Helena Ave., Helena, Montana 59601, and are incorporated by reference:

(a) Form VSP 001, "Viatical Settlement Provider Report-All States and Territories" (March 2004);

(b) Form VSP 002, "Viatical Settlement Provider Report-Montana Insureds Only" (March 2004);

(c) Form VSP 003, "Individual Mortality Report-Montana Insureds Only" (March 2004);

(d) Form VSB 001, "Viatical Settlement Broker Report-All States and Territories" (March 2004);

(e) Form VSB 002, "Viatical Settlement Broker Report-Montana Insureds Only" (March 2004); and

(f) Form VSPB 001, "Viatical Settlement Provider/Broker

Certification Form" (March 2004).

AUTH: 33-20-1315, MCA
IMP: 33-20-1309, MCA

COMMENT 23: Two commenters suggested that the Department use the National Association of Insurance Commissioners' model rule and reporting forms for financial reporting by viatical settlement brokers and providers instead of the language proposed by the Department in New Rule I (ARM 6.6.8510).

RESPONSE 23: The Department agrees to use the model rules and forms, with some additional Montana specific requirements that will enable the department to carry out its statutory duty to determine whether a viatical settlement provider is financially responsible.

NEW RULE II (ARM 6.6.8511) PROHIBITED PRACTICES (1) A viatical settlement provider, ~~or viatical settlement broker or viatical settlement representative~~ shall not provide patient identifying information to any person, unless the insured ~~and viator provide~~ provides written consent to the release of the information at or before the time ~~of the viatical settlement transaction~~ the viator enters into a viatical settlement contract pursuant to ARM 6.6.8505(3).

(2) A viatical settlement provider, ~~or viatical settlement broker or viatical settlement representative~~ shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a viatical settlement provider, ~~or viatical settlement broker or viatical settlement representative~~ is served with a subpoena and, therefore, is compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at ~~their~~ the insured's last known ~~addresses~~ address within five business days after receiving notice of the subpoena.

(3) through (5) remain as proposed.

AUTH: 33-20-1315, MCA
IMP: 33-20-1313, MCA

COMMENT 24: The commenter, the Executive Director of the Viatical and Life Settlement Association of America, noted that the term "viatical settlement transaction" was not defined in New Rule II (ARM 6.6.8511) and suggested that the phrase be defined.

RESPONSE 24: In lieu of defining the phrase, the department removed it and substituted the phrase "at or before the time the viator enters into a viatical settlement contract."

COMMENT 25: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, recommended that the Department require only the insured to consent to release of patient identifying information in New Rule II (ARM 6.6.8511) rather than requiring both the insured and the viator to consent.

RESPONSE 25: The Department agrees with this recommendation and changed New Rule II (ARM 6.6.8511) accordingly.

COMMENT 26: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, asked the Department to remove from New Rule II (ARM 6.6.8511) a requirement that would prohibit use of an unrealistic life expectancy in order to reduce the payout due to a viator.

RESPONSE 26: The Department believes this consumer protection measure is necessary to protect consumers from unethical practices.

NEW RULE III (ARM 6.6.8512) INSURANCE COMPANY PRACTICES (1) remains as proposed.

(a) a current authorization consistent with applicable law, signed by the policyowner or certificateholder, accompanies the request; and

(b) in the case of an individual policy or group coverage where details with respect to the certificate holder's coverage are maintained by the insurer, submission of a form prescribed by the commissioner, which has been completed by the viatical settlement provider or the viatical settlement broker in accordance with the instructions on the form; ~~and.~~

~~(c) in the case of group insurance coverage:~~

~~(i) submission of a form prescribed by the commissioner, which has been completed by the viatical settlement provider or viatical settlement broker in accordance with the instructions on the form; and~~

(ii) which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

(2) remains as proposed.

(3) A life insurance company may not charge a fee for responding to a request for information from a viatical settlement provider or viatical settlement broker in compliance with this rule in excess of any usual and customary charges to policyowners, contractholders, certificateholders or insureds for similar services.

(4) remains as proposed.

AUTH: 33-19-306 and 33-20-1315, MCA

IMP: 33-19-306, MCA

COMMENT 27: Two commenters proposed adding a provision to New Rule III (ARM 6.6.8512) that would provide "An insurance company shall not require the viator or insured to sign any request for change in a policy or group certificate from a viatical settlement provider that is the owner or assignee of the insured's insurance coverage, unless the viator or insured has ownership, assignment, or irrevocable beneficiary rights under the policy. In such a situation, the viatical settlement provider shall provide timely notice to the insured that a settlement transaction on the policy has occurred. Timely notice shall be provided within 15 calendar days of the change in a policy or group certificate."

RESPONSE 27: This Department agrees that this provision may reduce unwarranted interference with a viatical settlement by an insurance company once a viatical settlement contract has been agreed to; however, the department would prefer to include this proposal in a subsequent notice of proposed rulemaking in order to give the public further opportunity to participate.

COMMENT 28: One commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, proposed the following language for inclusion in New Rule III (ARM 6.6.8512): "It is unlawful for an insurance company to prohibit, restrict, limit, or impair a life insurance producer from lawfully operating as a viatical settlement broker or otherwise negotiating viatical settlement contracts on behalf of a viator, aiding and assisting a viator with a viatical settlement contract, or otherwise participating in a viatical settlement transaction provided for in this chapter or to engage in any transaction, act, practice, or course of business or dealing which restricts, limits, or impairs in any way the lawful transfer of ownership, change of beneficiary, or assignment of a policy to effectuate a viatical settlement contract." Another commenter, a representative of the American Council of Life Insurers, argued that this proposal would "impair the lawful contract rights of an insurer and its appointed producers."

RESPONSE 28: The Department believes this proposal is a substantial departure from the rule proposed in the notice of proposed rulemaking and would prefer to address this issue in a separate notice in order to afford a full opportunity for public participation.

COMMENT 29: The commenter, a representative of Life Settlement Institute, a trade association composed of life settlement providers, proposed changes to New Rule III (ARM 6.6.8512) which he indicated would make the rule conform to the National Association of Insurance Commissioners' model rule.

RESPONSE 29: The Department reviewed the proposed rule and the model rule and altered the language in the proposed rule to conform to the National Association of Insurance Commissioners' model.

COMMENT 30: Two commenters suggested that, in order to eliminate potential confusion, the Department propose eliminating existing viatical rules in their entirety and replacing them with the new rules.

RESPONSE 30: The Department examined this alternative in drafting the notice of proposed rulemaking; however, it determined in consultation with the Secretary of State's Office that modifying the existing rules was the most appropriate method of achieving the department's objectives.

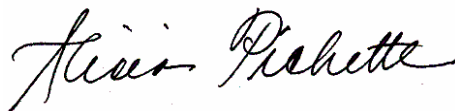
6. The Department has thoroughly considered one additional comment made. A summary of that comment received and the Department's response follows:

COMMENT 31: Two commenters encouraged the Department to change the financial accountability requirements in ARM 6.6.8502 to allow viatical settlement providers and brokers to obtain either an errors and omissions policy or a surety bond.

RESPONSE 31: In this notice of proposed rulemaking, the Department has not proposed changing any of the provisions of ARM 6.6.8502. Pursuant to the Montana Administrative Procedure Act, the Department must give notice and an opportunity to be heard with respect to a change such as the one proposed by the commenters. The Department will study the suggested changes, but will not take action with respect

to the comments as part of this rulemaking.

JOHN MORRISON, State Auditor
and Commissioner of Insurance



By: _____
Alicia Pichette
Deputy Insurance Commissioner

By: /s/ Patrick M. Driscoll
Patrick M. Driscoll
Rule Reviewer

Certified to the Secretary of State on January 3, 2005.